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Our File No.: 9000.18070-S

Plaintiff	:	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY
ERIC JOHNS	:	**Civil Action No.** 2:12-cv-00955-SDW-MCA
VS.	:	
Defendants	:	***Civil Action***
CITY OF ELIZABETH, ELIZABETH POLICE CHIEF DIRECTOR JAMES COSGROVE, ELIZABETH POLICE SERGEANT M. KELLY, ELIZABETH POLICE OFFICER THOMAS GAINES, ELIZABETH POLICE OFFICER DAVID HAVERTY, ELIZABETH POLICE OFFICER NICOLAS AND ELIZABETH POLICE OFFICER QUELOPANA, ET AL	:	ANSWER, SEPARATE DEFENSES, NOTICE TO PRODUCE DOCUMENTS, DEMAND FOR ANSWERS TO INTERROGATORIES, DEMAND FOR WRITTEN STATEMENT OF DAMAGES CLAIMED, DESIGNATION OF TRIAL COUNSEL AND JURY DEMAND

Defendant, Officer Nicolas, answering the Complaint of the plaintiff filed herein for his Answer, says:

AS TO THE PARTIES

1. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1 and leaves plaintiff to his proofs.

2. The allegations contained in paragraph 2 are not directed towards this defendant and, therefore, he makes no answer.

3. The allegations contained in paragraph 3 are not directed towards this defendant and, therefore, he makes no answer.

4. The allegations contained in paragraph 4 are not directed towards this defendant and, therefore, he makes no answer.

5. The allegations contained in paragraph 5 are not directed towards this defendant and, therefore, he makes no answer.

6. The allegations contained in paragraph 6 are not directed towards this defendant and, therefore, he makes no answer.

7. The allegations contained in paragraph 7 are not directed towards this defendant and, therefore, he makes no answer.

8. Defendant admits the allegations contained in paragraph 8.

9. The allegations contained in paragraph 9 are not directed towards this defendant and, therefore, he makes no answer.

10. The allegations contained in paragraph 10 are not directed towards this defendant and, therefore, he makes no answer.

AS TO JURISDICTION

11. Defendant denies the allegations contained in paragraph 11.

12. Defendant denies the allegations contained in paragraph 12.

AS TO SUBSTANTIVE ALLEGATIONS

14. Defendant denies the allegations contained in paragraph 14.

15. Defendant denies the allegations contained in paragraph 15.

16. Defendant denies the allegations contained in paragraph 16.

17. Defendant denies the allegations contained in paragraph 17.

18. Defendant admits the allegations contained in paragraph 18.

19. Defendant denies the allegations contained in paragraph 19.

20. Defendant denies the allegations contained in paragraph 20.

21. Defendant denies the allegations contained in paragraph 21.

22. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 22 and leaves plaintiff to his proofs.

AS TO THE FIRST COUNT

(Excessive Force-NJersey Civil Rights Claim Under N.J.S.A. 10:6-2)

23. Defendant repeats each and every answer to the allegations contained in paragraphs 1 through 22 and makes the same a part hereof as if set forth at length.

24. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 24 and leaves plaintiff to his proofs.

25. Defendant denies the allegations contained in paragraph 25.

26. Defendant admits the allegations contained in paragraph 26.

27. Defendant denies the allegations contained in paragraph 27.

28. Defendant denies the allegations contained in paragraph 28.

29. Defendant denies the allegations contained in paragraph 29.

30. Defendant denies the allegations contained in paragraph 30.

AS TO THE SECOND COUNT
WILFUL AND WANTON MISCONDUCT

31. Defendant repeats each and every answer to the allegations contained in paragraphs 1 through 30 and makes the same a part hereof as if set forth at length.

32. Defendant denies the allegations contained in paragraph 32.

33. Defendant denies the allegations contained in paragraph 33.

AS TO THE THIRD COUNT
RESPONDEAT SUPERIOR

34. Defendant repeats each and every answer to the allegations contained in paragraphs 1 through 33 and makes the same a part hereof as if set forth at length.

35. Defendant denies the allegations contained in paragraph 35.

36. Defendant denies the allegations contained in paragraph 36.

37. Defendant denies the allegations contained in paragraph 37.

AS TO THE FOURTH COUNT
(Intentional Infliction of Emotional Distress)

38. Defendant repeats each and every answer to the allegations contained in paragraphs 1 through 37 and makes the same a part hereof as if set forth at length.

39. Defendant denies the allegations contained in paragraph 39.

40. Defendant denies the allegations contained in paragraph 40.

AS TO THE FIFTH COUNT
(Negligent Infliction of Emotional Distress)

41. Defendant repeats each and every answer to the allegations contained in paragraphs 1 through 40 and makes the same a part hereof as if set forth at length.

42. Defendant denies the allegations contained in paragraph 42.

43. Defendant denies the allegations contained in paragraph 43.

44. Defendant denies the allegations contained in paragraph 44.

AS TO THE SIXTH COUNT
(Negligent Supervision and Training)

45. Defendant repeats each and every answer to the allegations contained in paragraphs 1 through 44 and makes the same a part hereof as if set forth at length.

46. The allegations contained in paragraph 46 are not directed towards this defendant and, therefore, he makes no answer.

47. Defendant denies the allegations contained in paragraph 47.

48. Defendant denies the allegations contained in paragraph 48.

49. Defendant denies the allegations contained in paragraph 49.

50. Defendant denies the allegations contained in paragraph 50.

51. Defendant denies the allegations contained in paragraph 51.

52. Defendant denies the allegations contained in paragraph 52.

53. Defendant denies the allegations contained in paragraph 53.

AS TO THE SEVENTH COUNT
(Negligent Hiring and Retention)

54. Defendant repeats each and every answer to the allegations contained in paragraphs 1 through 53 and makes the same a part hereof as if set forth at length.

55. The allegations contained in paragraph 2 are not directed towards this defendant and, therefore, he makes no answer.

56. Defendant denies the allegations contained in paragraph 56.

57. Defendant denies the allegations contained in paragraph 57.

58. Defendant denies the allegations contained in paragraph 58.

59. Defendant denies the allegations contained in paragraph 59.

60. Defendant denies the allegations contained in paragraph 60.

SEPARATE DEFENSES

1. Defendant denies negligence.

2. Plaintiff was negligent.

3. The Complaint fails to state a cause of action upon which relief may be granted.

4. The accident and injuries alleged were caused or contributed to by the negligence of others over whom this defendant has no control and for whom he has no legal liability.

5. While denying any negligence for the accident and injuries alleged, should the negligence of plaintiff be found to be not greater than that of this defendant, this defendant demands plaintiff's damages be diminished by the percentage of negligence attributable to plaintiff, pursuant to the Comparative Negligence Act, N.J.S.A. 2A:15-5.1 et seq.

6. Pursuant to Federal Rule 11, the cause of action as stated is frivolous and the defendant will, at the conclusion of the matter, seek those sanctions allowed by law.

7. While denying any negligence, defendant asserts that the damages sustained by the plaintiff in this matter were caused directly by the actions of the plaintiff. To that extent, there should be an assessment of liability against the plaintiff in this matter against which defendant would seek a reduction of any damages assessed against it pursuant to N.J.S.A. 2A:15-5.1 et seq.

8. Plaintiff's claim for punitive damages is violative of the United States Constitution as applied to the States and is, therefore, barred.

9. Defendant denies the existence of or breach of any duty and further denies the existence of or breach of any contractual obligation, express or implied.

10. The suit is barred by the Statute of Limitations, N.J.S.A. 2A:14-1 et seq.

11. This defendant is guilty of no intentional misconduct which proximately caused any injury to plaintiff.

12. Any injury occurring to the plaintiff was the direct and proximate result of the plaintiff's own conduct.

13. Plaintiff's claim is barred by the Doctrine of Assumption and Risk.

14. Plaintiff's claim is barred or, at the very least, the damage to which it is entitled, is reduced by virtue of the Doctrine of Avoidable Consequences.

15. At all times relevant to this lawsuit, this defendant has conformed to the laws and regulations of all other statutes and countries upon which this litigation impinges.

16. Plaintiff's claims are barred by estoppel.

17. Plaintiff's claims are barred by the Doctrine of Unclean Hands.

18. Defendant asserts the applicability of the provisions of N.J.S.A. 59:2-1 and N.J.S.A. 59:2-2, as to the immunities available to the public entity and/or public employee.

19. Defendant asserts the applicability of the provisions of N.J.S.A. 59:2-3 and N.J.S.A. 59:3-2, as to the absence of liability from the exercise of judgment or discretion.

20. Defendant asserts the applicability of the provisions of N.J.S.A. 59:2-4 and N.J.S.A. 59:3-3 as to the non-liability for any

injury caused by adopting or failing to adopt a law or by failing to enforce any law.

21. Defendant asserts the applicability of the provisions of N.J.S.A. 59:3-5 as to the non-liability of a public employee for an injury caused by its adoption or failure to adopt any law or by its failure to enforce any law.

22. Defendant asserts the applicability of the provisions of N.J.S.A. 59:4-7 as to the effect of weather conditions on the use of streets and highways.

23. Defendant asserts the applicability of the provisions of N.J.S.A. 59:5-4 as to the failure to provide police protection service.

24. Defendant asserts the applicability of the provisions of N.J.S.A. 59:8-3 through 59:8-7 regarding failure to provide adequate Notice of Claim.

25. Defendant asserts the applicability of the provisions of N.J.S.A. 59:8-8 through 59:8-11 regarding failure to timely file Notice of Claim and/or failure to file Notice of Claim as set forth therein.

26. Defendant asserts the applicability of the provisions of N.J.S.A. 59:9-2 concerning interest and limitations on judgment.

27. Defendant asserts the applicability of the provisions of N.J.S.A. 59:9-3 through N.J.S.A. 59:9-5 concerning limitations on contributions, comparative negligence, and discretion to award attorney's fees.

28. This defendant is guilty of no intentional misconduct which proximately caused any injury to plaintiff.

29. The defendant, if involved at all, acted within the scope of their authority and in good faith in the performance of their duties.

30. The defendant, if involved at all, acted reasonably and properly under the circumstances.

31. No malicious intent of causing a deprivation of plaintiff's civil rights and/or constitutional rights has been factually set out against the defendant.

32. Plaintiff has failed to show approval or acquiescence of defendant of the action as alleged.

33. Defendants are not persons as required by the statutes and plaintiff has failed to allege that the alleged injury was the result of actions taken under color of official policy, custom, or usage of defendants.

34. Defendants were carrying out their duties as officials and employees of the City of Elizabeth, and are entitled to qualified immunity under the statutes.

35. The defendant denies the allegations of improper conduct as set forth in plaintiff's Complaint; however, the alleged misconduct does not rise to the level of a constitutional violation.

36. The defendant acted in good faith and without malicious intent to deprive plaintiff of constitutional rights.

37. The municipal defendants are immune from plaintiff's claim for punitive damages.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that the undersigned requests that you serve upon us a written statement of the amount of damages claimed in the above-entitled action.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the rules, PETER H. SPAETH, ESQUIRE, has been designated as trial counsel on behalf of defendant, Officer Nicolas, in the above-captioned matter.

DEMAND FOR JURY TRIAL

Demand is hereby made for a trial by jury as to all issues.

CERTIFICATION

1. The undersigned hereby certifies that at the time of the filing of this pleading, the matter in controversy is not the subject of any other action pending in any Court and/or Arbitration proceeding.

2. I certify that the within pleading was filed within the time prescribed by the New Jersey Court Rules. I further certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

WOLFF, HELIES, DUGGAN,
SPAETH & LUCAS, P.A.
Attorneys for Defendant,
Officer Nicolas

S/ PETER H. SPAETH

By: ______________________________

PETER H. SPAETH

Dated: March 1, 2012

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